

CHAPTER 24 IOWA RETIREMENT FACILITIES

191—24.1(523D) Purpose. The following chapter is promulgated for the purpose of administering the provisions of Iowa Code chapter 523D, the Iowa retirement facilities Act, relating to senior adult congregate living facilities and continuing care retirement communities.

191—24.2(523D) Title. The Act may be cited as the “Iowa retirement facilities Act.”

191—24.3(523D) Definitions. As used in the Act and this chapter, unless the context otherwise requires:

“*Act*” means Iowa Code chapter 523D, the Iowa retirement facilities Act.

“*Actuarial forecast*” means an analysis which is performed by a qualified actuary or an individual who has demonstrated to the satisfaction of the insurance division the necessary experience and educational background. Such analysis shall be in accordance with generally accepted actuarial principles and practices (GAAP) and shall include a statement of actuarial opinion, an actuarial balance sheet, a cash flow projection, and a statement of applicable actuarial methodology, formulas, and assumptions.

“*Certified financial statements*” means financial statements audited and certified by an independent certified public accountant in accordance with generally accepted auditing standards.

“*Certified public accountant*” means a person who has received from the Iowa accounting examining board a certificate as a certified public accountant who is in good standing and who is currently registered under Iowa Code section 542C.20 or holding certified public accountant certificates issued under the laws of another state.

“*Commissioner*” means the commissioner of insurance for the state of Iowa.

“*Financial institution*” means a state or federally insured bank, savings bank, savings and loan association, credit union, trust department thereof, or a trust company authorized to do business in the state of Iowa.

“*Person*” means an individual, corporation, trust, partnership or association, or any other legal entity.

“*Qualified actuary*” means an individual who is a member of the American Academy of Actuaries.

“*Statement of financial feasibility*” means a financial forecast, as defined by the American Institute of Certified Public Accountants (AICPA), of the revenues, expenses, working capital needs, and other financial requirements for the new or expanded facility or an alternative financial study in a form acceptable to the insurance division. The forecast period should include the development or expansion period and extend for five fiscal years from the date of initial occupancy. Unless waived by the commissioner, the statement of financial feasibility shall include a cash flow forecast with underlying assumptions and be presented in accordance with AICPA guidelines. The financial analysis shall be prepared by either a qualified actuary, a certified public accountant, or an individual who has demonstrated to the satisfaction of the insurance division the necessary experience and educational background.

“*Statement of the market feasibility*” means an analysis of the market conditions which (1) identifies and evaluates the potential market, including a demographic and economic profile of the population in the facility’s market area; (2) identifies the existing or proposed facilities or similar businesses offering similar services in the potential market area, including, if available, the occupancy rate for existing facilities for the last three years; and (3) identifies the name and address of the person who prepared the feasibility study and the experience of the person in preparing similar studies or otherwise consulting in the field of continuing care or related health care fields.

191—24.4(523D) Administration.

24.4(1) The Act shall be administered by the regulated industries unit of the division of insurance. Although the Iowa commissioner of insurance shall be the administrator, the Iowa superintendent of securities, as deputy administrator, shall be the principal operations officer responsible to the commissioner for the routine administration of the Act and management of the administrative staff of the Iowa securities bureau.

24.4(2) In the absence of the commissioner, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the superintendent of securities shall be the acting administrator and shall, during the absence, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the superintendent of securities any or all of the functions assigned to the commissioner by the Act.

24.4(3) Upon request the commissioner may honor requests from providers or potential providers for interpretative opinions indicating the commissioner's enforcement position on a proposed course of action detailed in the request for the interpretative opinion.

24.4(4) Upon request the commissioner may certify that photocopies provided by the division of insurance are full, true, and correct copies of the original instrument filed, kept or recorded by the division of insurance. The fee for the certification process is \$5 per request.

191—24.5(523D) Misrepresentations.

24.5(1) A facility or provider shall not represent or imply in any manner that the facility or provider has been sponsored, recommended, or approved or that the facility's or provider's abilities or qualifications have in any respect been passed upon by the Iowa division of insurance or the state of Iowa.

24.5(2) Nonetheless, if the statements are factually correct, a facility or provider may state that a disclosure statement has been filed with the Iowa division of insurance in accordance with the Iowa retirement facilities Act. Likewise, if the statements are factually correct, a facility or provider may state (a) that the facility or provider has filed notice of new construction with the Iowa division of insurance in accordance with the Iowa retirement facilities Act or (b) that the commissioner of insurance has approved the release of escrowed funds.

191—24.6(523D) Complaints.

24.6(1) The division of insurance may receive and process each complaint made against any facility or provider which alleges certain acts or practices which may constitute one or more violations of the provisions of the Act. Where appropriate, complaints may be referred, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local officials, may make and file a complaint with the commissioner. Complaints may be received from sources outside the state of Iowa and processed in the same manner as those originating in Iowa.

24.6(2) Before the division takes any action on a complaint, the facility or provider will be provided with a summary of information set forth in the complaint and an opportunity to provide a response to the allegations. If required by the division of insurance, complaints shall be made in writing on forms prescribed and provided by that division.

191—24.7(523D) Address for filings. All complaints, inquiries, correspondence, applications, and other filings under the Iowa retirement facilities Act or this chapter shall be addressed as follows: Regulated Industries Unit, Iowa Insurance Division, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319.

191—24.8(523D) Fees. The following fees are hereby established by the division of insurance:

- 1. Initial filing fee \$100.00
- 2. Annual filing fee \$100.00
- 3. Certification \$ 5.00
- 4. Name change \$ 10.00

- 5. New construction filing fee \$250.00
- 6. Photocopies of records (per page) \$ 0.50
- 7. Printout of facilities \$ 10.00

All fees are nonrefundable.

191—24.9(523D) Forms. The forms listed in this rule are published by the Iowa insurance division, and copies of the forms may be obtained from the Regulated Industries Unit, Iowa Insurance Division, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319. The division adopts and incorporates herein by reference the forms listed in this rule; and their use is required, where applicable, for compliance with the provisions of the Iowa retirement facilities Act and this chapter.

<u>FORM NUMBER</u>	<u>DESCRIPTION</u>
RFA-1	Notice of Annual Filing. Used by continuing care retirement communities and senior adult congregate living facilities to make their annual filing under the Act.
RFA-2	Notice of New Construction. Used by continuing care retirement communities and senior adult congregate living facilities to notify the insurance division of their intent to begin new construction.
RFA-3	Release of Escrowed Funds. Used by escrow agents or facilities to request the insurance division’s approval for the release of escrowed funds.

191—24.10(523D) Financial statements, studies, and forecasts.

24.10(1) Financial statements shall be prepared in accordance with generally accepted accounting principles and practices (GAAP).

24.10(2) The financial statements shall be presented in a format that allows financial analysis of the contracting party undertaking to provide the continuing care. The contracting party may consist of an individual facility or numerous operating units. In some cases, where the financial condition and financial obligations of affiliated legal entities are relevant to the financial condition of the contracting party, preparation on a consolidated basis may be necessary. The financial statements shall provide sufficient financial disclosure to the continuing care resident to enable the resident to make an informed decision.

24.10(3) Studies or forecasts must disclose the basic assumptions used.

24.10(4) The following audited financial statements must be filed with the annual disclosure statement:

- a. An income statement or a statement of revenues and expenses;
- b. A statement of changes in equity or change in fund balances;
- c. A balance sheet; and
- d. A statement of cash flows.

191—24.11(523D) Amendments to the disclosure statement.

24.11(1) Amendments to the most recent disclosure statement may be filed with the division of insurance at any time. No filing fee is required.

24.11(2) The filing shall be clearly marked to show changes from the most recent disclosure statement filed with the division or the filing shall be accompanied by a cover letter briefly outlining each of the sections of the disclosure statement that has been amended.

24.11(3) The filing shall consist of either (a) two copies of the disclosure statement containing the revisions as it is distributed to a prospective resident (one copy marked to show changes) or (b) if the changes are made by an amendment or addendum, two copies of the revised pages.

24.11(4) Changes in the operations of a provider or facility which shall require an amendment to a disclosure statement include, but are not necessarily limited to, the following:

- a. New or additional mortgages, security interests, loan commitments, long-term financing arrangements, or leases, which transaction materially affects the real property of the facility unless the material terms of such transaction were specifically described as a proposed transaction in the disclosure statement.
- b. The sale of the facility to a new provider.
- c. Changes in the provider's tax status.
- d. A material change in the form of the resident contract.

191—24.12(523D) Standards for the disclosure statement.

24.12(1) Readability. Documents given to residents, prospective residents, and personal representatives, including disclosure statements and residents' contracts, shall be drafted in accordance with the following standards:

- a. The language used shall be readable by a person of average intelligence and education.
- b. All information presented should be conveyed in a logical sequence and in a clear and direct fashion.
- c. Complex and compound sentences should be avoided.
- d. Words should convey their commonly understood meanings.
- e. Definitions shall be included for words or terms which cannot properly be explained or qualified in the text.
- f. Frequent section headings should be used to permit ease in locating provisions.
- g. Documents shall be printed in easily legible typeface in a size easily legible to the audience to whom the literature is directed. Upright type at least as large as 10-point type should be used.

24.12(2) Form. Documents shall be typed or printed on paper 8½ by 11 inches. The disclosure statement shall be bound or otherwise securely fastened.

24.12(3) Cover page. The cover page of the disclosure statement shall state, in a prominent location and in bold-faced type, "Disclosure Statement," the date of the disclosure statement, and a statement that the delivery of the disclosure to a contracting party before the execution of a contract for the provision of supportive services or continuing care is required by the Iowa retirement facilities Act, but that the disclosure statement has not been approved by any government agency or representative. If reference is made to a filing with the insurance division, the disclosure shall state that the division's review does not ensure accuracy or completeness of the information set out.

24.12(4) Table of contents. Multipaged documents shall contain a table of contents giving a comprehensive listing of all section headings used in the document. If the table of contents does not appear at the beginning of the document, the location of the table of contents shall be noted on the first page.

24.12(5) Acknowledgment. The last page of the disclosure statement shall consist of a detachable "acknowledgment of receipt" which shall be signed and dated by the resident. A copy of the acknowledgment shall be kept on file in the office of the provider for at least one year from the date of the acknowledgment.

24.12(6) Advertising. The disclosure statement shall contain no sales or advertising materials. Sales or advertising materials may be attached to the disclosure statement or packaged with the disclosure statement if the manner of attachment or packaging does not obfuscate the cover page of the disclosure statement.

These rules are intended to implement Iowa Code chapter 523D.

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